Supreme Court, U.S.
FILED

JUN 26 2002

OFFICE OF THE CLERK

No. 02 - 8

In The

Supreme Court of the United States

PAUL DAVID WOOSLEY,

Petitioner,

vs.

THE ADOPTION ALLIANCE, et al.,

Respondents.

On Petition For Writ Of Certiorari
To The Court Of Appeals
Fourth Court Of Appeals District Of Texas
San Antonio, Texas

PETITION FOR A WRIT OF CERTIORARI

PAUL DAVID WOOSLEY
Petitioner *pro se*
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June 26, 2002

51 pgs

QUESTION PRESENTED

I. Whether it is unconstitutional for a state court to terminate parental rights and grant an adoption when neither the child, the natural parents, nor the prospective adoptive parents have ever been domiciliaries of that state.

II. Whether a state court's purported termination of parental rights, without personal jurisdiction and without "minimum contacts", exceeds constitutional limitations.

III. Whether there is such a thing as a void state court judgment, or whether all judgments are merely "voidable" and thereby not subject to collateral impeachment.

PARTIES TO THE PROCEEDING

In accordance with Supreme Court Rule 14.1(b), the following contains a complete list of all parties to the proceedings below.

PARTY:

Petitioner:

Paul David Woosley
One Rohr Drive
Doylestown, PA 18901-4439

Respondents:

The Adoption Alliance
7303 Blanco Road
San Antonio, Texas 78216

David and Kimberly Smith, h/w
(would-be adoptive parents)

Dale R. Johnson
(Principal owner, attorney, and executive director of The Adoption Alliance)

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
PETITION FOR A WRIT OF CERTIORARI	1
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
REASONS ADVANCED IN SUPPORT OF GRANTING THE WRIT	3
I. THE PETITION SHOULD BE GRANTED BECAUSE THE COURT BELOW DECIDED IMPORTANT QUESTIONS OF FEDERAL LAW IN A WAY WHICH CONFLICTS WITH THE RULINGS OF THIS COURT	4
II. THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW DISREGARDS TRADITIONAL HOLDINGS THAT VOID JUDGMENTS MUST BE SET ASIDE DESPITE OTHER EQUITABLE DOCTRINES	6
CONCLUSION	6

TABLE OF AUTHORITIES

Page

CASES

Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989) 3, 5

CONSTITUTION

U.S. Const., amend XIV, § 1 ..... 2, 3, 6

STATUTES

28 U.S.C. § 1257 1

28 U.S.C. § 1738A (The Parental Kidnapping Prevention Act) 2, 4, 7

Tex. Fam. Code §§ 11.04-11.55 (Vernon 1993) ..... 2, App. F

Tex. Fam. Code § 11.04(c) (Vernon 1993) 4

Tex. Fam. Code § 11.051 (Vernon 1993) (now § 102.011) 5

Tex. Fam. Code § 11.53 (Vernon 1993) 4

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Paul David Woosley, respectfully requests that a writ of certiorari be issued to review the judgment of the Texas Fourth Court of Appeals, San Antonio.

OPINIONS BELOW

The opinion of the Texas Fourth Court of Appeals is not published (App. A), but can be found at 2001 WL 687571 or at 2001 Tex. App. LEXIS 4047. The Texas Fourth Court of Appeals Order Denying Motion for Rehearing is not published (App. B).

STATEMENT OF JURISDICTION

The Order sought to be reviewed was entered by the Texas Fourth Court of Appeals on June 20, 2001. The Texas Fourth Court of Appeals denied a timely motion for rehearing on October 9, 2001. Discretionary review was denied by the Supreme Court of Texas on January 31, 2002 (App. D), and a timely motion for rehearing was denied on March 28, 2002 (App. E).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend XIV, § 1

28 U.S.C. § 1738A (The Parental Kidnapping Prevention Act)

Tex. Fam. Code §§ 11.04-11.55 (Vernon 1993)

STATEMENT OF THE CASE

This is a case about a child who was not available for adoption in the state in which he was born, but who, according to the San Antonio courts, suddenly became available for adoption in Texas within one week after his birth by the mere expedient of the biological parents signing affidavits in Pennsylvania.

Mr. Woosley's child was born in Sewickley, Pennsylvania, where both parents resided, on July 8, 1992. Both parents' names appear on the birth certificate, and all parties' whereabouts have been known. One week later, on July 15, 1992, Petitioner Woosley's parental rights were purportedly terminated, without notice, by a San Antonio court.

The prospective adoptive parents, who at all relevant times have been residents of Connecticut, supposedly spirited Woosley's son from Pennsylvania to Texas because they wished for him to be their second adopted child.

On September 24, 1992, Woosley's attorney entered a Notice of Appearance and legal action eventually commenced and has been nearly continuous. Further background is contained in the "Affidavit of Paul David

Woosley" of June 22, 1995 (App. G), filed in previous proceedings below, and in the underlying Petitioner's Motion to Vacate Void Decrees (App. H).

Petitioner Woosley has always maintained that the Texas decrees terminating the parental rights of Pennsylvania parents and granting an adoption to Connecticut residents are void *ab initio* due to total lack of jurisdiction, violation of due process since no notice was provided, and extrinsic fraud since the timing and location of the proceedings were concealed.

The first time the San Antonio courts specifically addressed the jurisdictional issues was on October 9, 2001, when the Texas Fourth Court of Appeals issued its unpublished Order Denying Motion for Rehearing (App. B).

Given the fact that this Court has held in a similar context that a child's parents have no power to transfer subject-matter jurisdiction over the familial status of their children by signing documents, *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 49 (1989), Petitioner Woosley maintains that the conclusion of the Texas Fourth Court of Appeals was in error.

REASONS ADVANCED IN SUPPORT OF GRANTING THE WRIT

The judgment of a state court deciding or reviewing a child custody determination is not ordinarily a likely candidate for review by this Court. This unusual case, however, raises federal concerns arising from the Constitution's commitment to Due Process and the protection of

fundamental rights as well as issues of sovereignty and comity.

In all of the opinions below (App. A; App. C), the Texas courts have never acknowledged the undisputed fact that the child was born outside of Texas and that neither the biological parents nor would-be adoptive parents have ever been residents of Texas.

I. THE PETITION SHOULD BE GRANTED BECAUSE THE COURT BELOW DECIDED IMPORTANT QUESTIONS OF FEDERAL LAW IN A WAY WHICH CONFLICTS WITH THE RULINGS OF THIS COURT

The primary question of federal law presented is a due process question: may a state court, consistent with notions of federalism and due process, terminate parental rights of non-domiciliaries and then grant an adoption to other non-domiciliaries, thereby circumventing the laws of the states of their residence.

Contrary to the statement contained in the Order Denying Motion for Rehearing (App. B), Tex. Fam. Code § 11.04(c) (Vernon 1993) – the **"Venue"** statute (App. F at App.13) does not contemplate that courts in the State of Texas may acquire dominion or subject-matter jurisdiction over non-residents merely because they sign a document in their respective state of residence. Instead, the measured language of the Texas Legislature is contained in the section entitled **"Jurisdiction"** § 11.53 (Vernon 1993) (App. F at App.15), which is consistent with the preemptive federal PKPA of 1980, 28 U.S.C. § 1738A, which was enacted to thwart the type of judicial shopping represented by this case.

If Indian parents cannot defeat a tribe's jurisdiction over their children by simply signing a consent within a particular state, *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 49 (1989), it cannot reasonably be concluded that Pennsylvania parents have any greater ability to defeat their State's jurisdiction by signing a vague waiver (App.29) within Pennsylvania. This Court admonishes that "a state-law definition of domicile would likely spur the development of an adoption brokerage business." *Id.* at 46 n. 20.

Remarkably, in its Order Denying Motion for Rehearing (App. B), the Texas Court of Appeals stated: "Personal jurisdiction over appellant is not required. . . . *See* Tex. Fam. Code § 11.051 (Vernon 1993) (now § 102.011). . . . " In fact, this provision of the Texas Family Code (App. F at App.14) does not state that personal jurisdiction is not required, but instead lists seven (7) methods by which personal jurisdiction may be exercised over a non-domiciliary, none of which apply to Petitioner Woosley.

Woosley did not purposely avail himself of the laws of Texas (App. G). This Court has stated that parental rights are more precious than property rights. The Court is thereby encouraged to clarify whether personal jurisdiction or whether at least "minimum contacts" are necessary to terminate parental rights when a parent's identity is known.

Petitioner Woosley respectfully submits that the application of Texas law to define his rights and interests with respect to his son is offensive to notions of substantial justice and exceeds constitutional limitations.

Many interstate adoptions are contemplated wherein these issues of federal law are implicated. It is respectfully

submitted that greater uniformity of outcome, which should be sought where such fundamental rights are concerned, would be better achieved with further guidance from this Court.

II. THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW DISREGARDS TRADITIONAL HOLDINGS THAT VOID JUDGMENTS MUST BE SET ASIDE DESPITE OTHER EQUITABLE DOCTRINES

Based upon the undisputed circumstances of this case and upon the discussion above, it is plausible that the decrees complained of were issued without jurisdiction and without authority by the trial court.

Petitioner Woosley urges that the decrees, if indeed void, must be vacated. The fundamental issue then, which was not addressed in the courts below, is whether there is still such a concept as a "void judgment", as described by a long line of authorities in Texas and elsewhere (App. H), or whether all judgments are merely "voidable".

CONCLUSION

This case does not appear to have far-reaching effects and will not serve as precedent for the unsavory proposition that Texas courts can, at their whim, terminate parental rights regardless of where the parents reside or where the child is born.

To Petitioner Woosley, this is a case about his first-born son wrongfully kept from him and the protection of his rights by that shield known as the Constitution. To

citizens of Pennsylvania, this might be a case about state sovereignty. To the judiciary, it involves State Rights, Conflicts of Law, Equal Protection, Due Process, Full Faith and Credit, and the Parental Kidnapping Prevention Act. To people living in the United States, this is a case about the circumstances under which the well-to-do residents of one State may take advantage of those in sister states in their quest for a child to call their own. To many, it should be strictly about best interests, as they define them, and the courts should not attempt to interfere.

Mr. Woosley comes to this Court seeking the vindication of his individual rights. Toward this end, he beseeches the Court to grant his petition for a writ of certiorari and to attempt to right the wrong inflicted upon his family by reversing the determination of the Texas courts which conflict with the relevant decisions of this Court.

Respectfully submitted,

Dated: June 26, 2002

PAUL DAVID WOOSLEY
Petitioner *pro se*
One Rohr Drive
Doylestown, PA 18901-4439

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APPENDIX A

Court of Appeals
Fourth Court of Appeals District of Texas
San Antonio

[LOGO]

OPINION

No. 04-00-00343-CV

Paul David **WOOSLEY**,
Appellant

v.

THE ADOPTION ALLIANCE,
David Smith, Kimberly Smith, and Dale R. Johnson,
Appellees

From the 225th Judicial District Court,
Bexar County, Texas
Trial Court No. 95-PA-01117
Honorable John J. Specia, Judge Presiding

Opinion by: Alma L. López, Justice

Sitting: Tom Rickhoff, Justice
Alma L. López, Justice
Sarah B. Duncan, Justice

Delivered and Filed: June 20, 2001

AFFIRMED

MEMORANDUM OPINION

The facts of this case are reported in *Woosley v. Smith*, 925 S.W.2d 84 (Tex. App. – San Antonio 1996, no writ) (*Woosley I*). No appeal of this final judgment was taken. Nearly four years later, Woosley filed a motion to vacate

void decrees, referencing the same decree of termination and decree of adoption that were affirmed in *Woosley I*. The same parties to the first appeal are also adversaries in this cause. Woosley admitted on the record below that the jurisdictional issue he brings here was first raised in his motion for summary judgment in *Woosley I*. Appellant's first issue, that the trial court erred in denying, his motion to vacate void decrees is barred by the well-established principles of res judicata and collateral estoppel. *See Amstadt v. U.S. Brass Corp.*, 919 S.W.2d 644, 652 (Tex. 1996); *Eagle Properties, Ltd. v. Scharbauer*, 807 S.W.2d 714, 721 (Tex. 1990). The first issue is overruled.

Appellant's second issue, that the court erred in granting sanctions to appellees for filing a frivolous pleading, is without merit and is overruled. See TEX. R. CIV. P. 13 (Vernon Supp. 2001); TEX. CIV. PRAC. & REM. CODE §§ 9.00, 10.00 (Vernon Supp. 2001).

Appellant's third issue, that the court erred in dismissing his tort action for want of prosecution, is also without merit and is overruled. The trial court did not abuse its discretion in granting a dismissal when appellant admitted that he had permitted the case to linger on the docket for four years without any attempt on his part to prosecute the cause. *See* TEX R. CIV. P. 165a; *Veterans' Land Bd. v. Williams*, 543 S.W.2d 89, 90 (Tex. 1976).

The judgment of the trial court is affirmed in all things.

Alma L. López, Justice

Do Not Publish

Appendix A

Court of Appeals
Fourth Court of Appeals District of Texas
San Antonio

[LOGO]

JUDGMENT

No. 04-00-00343-CV

Paul David **WOOSLEY**,
Appellant

v.

THE ADOPTION ALLIANCE,
David Smith, Kimberly Smith, and Dale R. Johnson,
Appellees

From the 225th Judicial District Court,
Bexar County, Texas
Trial Court No. 95-PA-01117
Honorable John J. Specia, Judge Presiding

BEFORE JUSTICE RICKHOFF, JUSTICE LÓPEZ, AND JUSTICE DUNCAN

In accordance With our opinion this day, the trial court's final judgment and order granting sanctions is AFFIRMED. It is ORDERED that appellees, the Adoption Alliance, David Smith, Kimberly Smith, and Dale R. Johnson, recover their costs of this appeal from appellant Paul David Woosley and from the cash deposit in lieu of cost bond. After all costs have been paid, the clerk of the district court is directed to release the balance, if any, of the cash deposit to Paul David Woosley, pro se.

SIGNED June 20, 2001.

/s/ Alma L. López
Alma L. López
Justice

APPENDIX B

Court of Appeals
Fourth Court of Appeals District of Texas
San Antonio

[SEAL]

October 9, 2001

No. 04-00-00343-CV

Paul David **WOOSLEY**,
Appellant

v.

THE ADOPTION ALLIANCE,
David Smith, Kimberly Smith, and Dale R. Johnson,
Appellees

From the 225th Judicial District Court,
Bexar County, Texas
Trial Court No. 95-PA-01117
Honorable John J. Specia, Judge Presiding

ORDER DENYING MOTION FOR REHEARING

On rehearing, appellant again asserts that a 1993 judgment terminating his parental rights is void because the trial court lacked jurisdiction. Appellant is incorrect and failed to bring forth an appellate record to support his factual contentions. *See Murray v. Devco, Ltd.*, 731 S.W.2d 555, 557 (Tex. 1987). The trial court acquired jurisdiction over the termination proceedings in question because the child's domicile became Bexar County when the biological parents signed affidavits of relinquishment to an authorized agency, *i.e.*, The Adoption Alliance, whose principle place of business is Bexar County. That authorized agency stood *in loco parentis* as managing conservator of the child

during the pendency of the termination proceedings. The child acquired the domicile of its managing conservator. TEX. FAM. CODE § 11.04(c) (Vernon 1993) (recodified following amendment by Acts 1995, 74th Leg., ch. 20, § 103.001). Personal jurisdiction over appellant is not required in status adjudications on the same level as in other proceedings. *See* TEX. FAM. CODE § 11.051 (Vernon 1993) (now § 102.011); *Williams v. Knott*, 690 S.W.2d 605, 606-07 (Tex. App. – Austin 1985, no writ). Appellant's three issues are without merit and the motion for rehearing is denied.

It is so **ORDERED** on October 9, 2001,

/s/ Alma L. López
Justice Alma L. López

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 9th day of October, 2001.

/s/ Herb Schaefer
Herb Schaefer, Clerk

[SEAL]

APPENDIX C

NO. 95-PA-01117

PAUL DAVID WOOSLEY	§	IN THE
	§	DISTRICT COURT
VS.	§	
	§	225TH JUDICIAL
THE ADOPTION ALLIANCE, ET AL	§	DISTRICT
	§	
	§	BEXAR COUNTY, TEXAS

FINAL JUDGMENT AND ORDER GRANTING SANCTIONS

On the 31st day of March, 2000, came on to be heard the Motion to Dismiss and for Sanctions filed by Defendant herein, and the Motion to Vacate Void Decrees filed by PAUL DAVID WOOSLEY.

Appearances

Defendants appeared by and through their counsel of record and announced ready for trial.

PAUL DAVID WOOSLEY appeared in person and announced ready.

Findings

The Court, after having considered the pleadings and after having listened to the evidence, makes the following findings.

1. Good cause exists for the imposition of sanctions based upon the following particulars:

a. PAUL DAVID WOOSLEY in cause number 93-PA-01149 requested this Court to grant the same relief

which is requested in his current motion to vacate void decrees.

B. The Court has previously denied Mr. Woosley's request and granted summary judgment against him in connection with such requests.

C. Mr. Woosley appealed the Court's judgment denying him the relief which he currently requests in his motion to void prior decrees.

D. The Court of Appeals affirmed the court's determination and denied Mr. Woosley's request to void the subject decrees.

E. Mr. Woosley filed suit in federal court against the Defendants herein, or, at least, one of them, seeking to have a federal court grant the same relief requested herein.

F. The efforts in federal court were also unsuccessful, which included an application for *certiorari* to the United States Supreme Court.

G. Mr. Woosley admits that he believes his rights were violated by the Adoption Alliance.

H. Mr. Woosley admits in the Court's record affirmatively establishes that there has been no action in the above-entitled matter for over 4 years.

2. The Court further finds that the Motion to Vacate Void Decrees filed by Mr. Woosley is groundless and brought in bad faith.

3. The Court further finds that the Motion to Vacate Void Decrees filed by Mr. Woosley was brought for the purposes of harassment.

4. Finally, the Court finds that the Motion to Dismiss for Want of Prosecution should be granted since there has been no activity in the case for at least 4 years.

Orders

IT IS, ACCORDINGLY, ORDERED, ADJUDGED AND DECREED that the above entitled and numbered cause be, and the same is hereby, dismissed for want of prosecution.

Sanctions are granted against Mr. Woosley as follows:

IT IS ORDERED that The Adoption Alliance be, and is hereby, granted judgment against PAUL DAVID WOOSLEY in the amount of $2,000, with interest thereon at a rate of 10% per annum, compounded annually, for which let execution issue if not timely paid.

IT IS FURTHER ORDERED that The Adoption Alliance be, and is hereby, granted judgment against PAUL DAVID WOOSLEY in the amount of $17,500.00; provided, however, if neither party perfects appeal to the Court of Appeals by filing notice of appeal, said judgment shall be credited $17,500.00. In the event PAUL DAVID WOOSLEY perfects appeal to the Court of Appeals and is ultimately unsuccessful on his appeal, and neither party seeks application for Supreme Court review, the $17,500.00 judgment shall be credited in the amount of $10,000. In the event PAUL DAVID WOOSLEY perfects his appeal to the Court of Appeals and is ultimately unsuccessful, and either party seeks Supreme Court review, but that review is not granted, the $17,500.00 judgment shall be credited $7,500.00.

Costs of court are awarded against PAUL DAVID WOOSLEY.

The Court finds that this cause was severed from Cause Number 93-PA-01149, and that in computing costs of court the Clerk is directed to include as part of the cost bill all costs accumulated in Cause Number 93-PA-01149. The Court further finds that PAUL DAVID WOOSLEY was "ruled for costs" in Cause Number 93-PA-01149 in the amount of $2,232.00; and that PAUL DAVID WOOSLEY has deposited with the District Clerk $2,232.00, which the District Clerk is currently holding. The District Clerk is ordered to pay the $2,232.00 to David Smith and to credit such payment against DAVID PAUL [sic] WOOSLEY's cost bill herein.

SIGNED the 12 day of April, 2000.

/s/ [Illegible]
JUDGE PRESIDING

APPROVED AS TO FORM:

LAW OFFICES OF SAM C. BASHARA
1800 Riverview Towers
111 Soledad
San Antonio, Texas 78205
(210) 227-1496
(212) 227-1547 (Fax)

By: /s/ Sam C. Bashara
Sam C. Bashara
State Bar No. 01869000
ATTORNEY FOR DEFENDANTS

APPENDIX D

(SEAL) **THE SUPREME COURT OF TEXAS**
Post Office Box 12248
Austin, Texas 78711 (512) 463-1312

January 31, 2002

Mr. Sam C. Bashara
Law Offices of Sam C. Bashara
111 Soledad, Suite 1800
San Antonio, TX 78205

RE: Case Number 01-1141
Court of Appeals Number: 04-00-00343-CV
Trial Court Number: 95-PA-01117

Style: PAUL DAVID WOOSLEY
v.
THE ADOPTION ALLIANCE, ET AL

Dear Counsel:

Today, the Supreme Court of Texas denied the petition for review in the above styled case.

Sincerely,

John T. Adams, Clerk

by /s/ Jessica L. Vlasac
Jessica L. Vlasac, Deputy

cc: Mr. Herb Schaefer, Clerk
Mr. Reagan Greer, Clerk
Mr. Paul David Woosley

APPENDIX E

(SEAL) **THE SUPREME COURT OF TEXAS**
Post Office Box 12248
Austin, Texas 78711 (512) 463-1312

March 28, 2002

Mr. Sam C. Bashara
Law Offices of Sam C. Bashara
111 Soledad, Suite 1800
San Antonio, TX 78205

RE: Case Number 01-1141
Court of Appeals Number: 04-00-00343-CV
Trial Court Number: 95-PA-01117

Style: PAUL DAVID WOOSLEY
v.
THE ADOPTION ALLIANCE, ET AL

Dear Counsel:

Today, the Supreme Court of Texas denied the motion for rehearing of the above styled petition for review.

Sincerely,

John T. Adams, Clerk

by /s/ Gena Pelham
Gena Pelham, Deputy Clerk

cc: Mr. Herb Schaefer, Clerk
Mr. Reagan Greer, Clerk
Mr. Paul David Woosley

APPENDIX F

Texas Family Code (Vernon 1993)

§ 11.04. Venue

(a) Except as otherwise provided in this subtitle, an original suit affecting the parent-child relationship shall be brought in the county where the child resides, unless:

(1) another court has continuing exclusive jurisdiction under Section 11.05 of this code; or

(2) venue is fixed by Section 3.55 of this code.

(b) A suit in which adoption is sought may be brought in the county where the child resides or in the county where the petitioners reside.

(c) A child resides in the county where his parents (or parent if only one parent is living) reside, except that:

(1) if a custodian for the child has been appointed by order of a court of this state before January 1, 1974, the child resides in the county where the custodian resides;

(2) if a guardian of the person has been appointed by order of a county or probate court and a managing conservator has not been appointed, the child resides in the county where the guardian of the person resides;

(3) if the parents of the child do not reside in the same county and if a managing conservator, a custodian, or a guardian of the person has not been appointed, the child resides in the county where the parent having care and control of the child resides;

(4) if the child is under the care and control of an adult other than a parent and (A) a managing

conservator, a custodian, or a guardian of the person has not been appointed or (B) the whereabouts of the parent and the guardian of the person is unknown or (C) the person whose residence would otherwise determine the residence of the child under this section has left the child under the care and control of the adult, the child resides where the adult having actual possession, care, and control of the child resides;

(5) if a guardian or custodian of the child has been appointed by order of a court of another state or nation, the child resides in the county where the guardian or custodian resides if that person resides in this state; or

(6) if it appears that the child is not under the care and control of an adult, the child resides where he is found.

Texas Family Code (Vernon 1993)

§ 11.051. Acquiring Jurisdiction Over Nonresident

In a suit affecting the parent-child relationship, the court may exercise status or subject matter jurisdiction over the suit as provided by Subchapter B of this chapter.[1] The court may also exercise personal jurisdiction over a person on whom service of citation is required or over the person's personal representative, although the person is not a resident or domiciliary of this state, if:

---

[1] Section 11.51 et seq.

Section 16 of the 1993 amendatory act provides:

"This Act takes effect September 1, 1993, and applies only to an order, decree, or judgment entered on or after that date."

(1) the person is personally served with citation in this state;

(2) the person submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) the child resides in this state as a result of the acts or directives of the person;

(4) the person resided with the child in this state;

(5) the person resided in this state and provided prenatal expenses or support for the child;

(6) the person engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

(7) there is any basis consistent with the constitutions of this state and the United States for the exercise of the personal jurisdiction.

Added by Acts 1975, 64th Leg., p. 1255, ch. 476, § 7, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 707, ch. 160, § 7, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 970, § 3, eff. Sept. 1, 1993.

Texas Family Code (Vernon 1993)

§ 11.53. Jurisdiction

(a) A court of this state that is competent to decide child custody matters has jurisdiction to make a child custody determination by initial decree or modification decree or order if:

(1) this state:

(A) is the home state of the child on the date of the commencement of the proceeding; or

(B) had been the child's home state within six months before the date of the commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this state;

(2) it appears that no other state would have jurisdiction under Subdivision (1) of Subsection (a) of this section and it is in the best interest of the child that a court of this state assume jurisdiction because:

(A) the child and his parents or the child and at least one contestant have a significant connection with this state other than mere physical presence in this state; and

(B) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(3) the child is physically present in this state and:

(A) the child has been abandoned; or

(B) it is necessary in an emergency to protect the child because he has been subjected to or

threatened with mistreatment or abuse or is otherwise neglected or there is a serious and immediate question concerning the welfare of the child; or

(4) it is in the best interest of the child that this court assume jurisdiction and:

(A) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with Subdivision (1), (2), or (3) of this subsection; or

(B) another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child.

(b) Except under Subdivisions (3) and (4) of Subsection (a) of this section, physical presence in this state of the child or of the child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(d) Except on written agreement of all the parties, a court may not exercise its continuing jurisdiction to modify custody if the child and the party with custody have established another home state unless the action to modify was filed before the new home state was acquired.

Texas Family Code (Vernon 1993)

§ 11.54. Notice and Opportunity to be Heard

Before making a custody decree based on jurisdiction established under this subchapter, reasonable notice and opportunity to be heard must be given to the contestants, to any parent whose parental rights have not been previously terminated, and to any person who has physical custody of the child. If any of these persons is outside this state, notice and opportunity to be heard must be given under Section 11.55 of this code.

Texas Family Code (Vernon 1993)

§ 11.55. Notice to Persons Outside This State; Submission to Jurisdiction

(a) Notice required for the exercise of jurisdiction over a person outside this state must be given in a manner reasonably calculated to give actual notice and may be:

(1) by personal delivery outside this state in the manner prescribed for service of process within this state;

(2) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its course of general jurisdiction;

(3) by any form of mail addressed to the person to be served and requesting a receipt, subject to the requirements of the Texas Rules of Civil Procedure; or

(4) as directed by the court, including publication, if other means of notification are ineffective, subject to the requirements of the Texas Rules of Civil Procedure.

(b) Notice under this section must be delivered, mailed, or published with sufficient time to allow for filing of an answer before any hearing in this state, in accordance with the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit. Each party whose rights, privileges, duties, or powers may be affected by the action is entitled to receive notice by citation and shall be commanded to appear by filing a written answer. Thereafter, the proceedings shall be as in civil cases generally.

(c) Proof of service outside this state may be made by the affidavit of the individual who made the service, or in the manner prescribed by the law of this state, by the order under which the service is made, or by the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(d) Notice is not required if a person submits to the jurisdiction of the court.

APPENDIX G

NO. 95-PA-01149

PAUL DAVID WOOSLEY	§	IN THE
	§	DISTRICT COURT
VS.	§	
	§	225TH JUDICIAL
THE ADOPTION ALLIANCE, ET AL	§	DISTRICT
	§	
	§	BEXAR COUNTY,
	§	TEXAS

AFFIDAVIT OF PAUL DAVID WOOSLEY

STATE OF PENNSYLVANIA §

COUNTY OF ALLEGHENY §

BEFORE ME, the undersigned authority, on this day personally appeared Paul David Woosley who being by me duly sworn on his oath deposed and stated as follows:

1. "My name is Paul David Woosley. I am over the age of 18 and am fully competent to testify as to the matters stated. I have personal knowledge of each of the facts contained in this affidavit and all facts and statements set forth in this affidavit are true and correct of my personal knowledge. I am the Petitioner/Plaintiff in this action in which I have filed a "Petition to Set Aside Void Judgment or In the Alternative for Bill of Review and Petition for Damages".

2. I am the natural father of a child who was born in Sewickley, Pennsylvania on July 8, 1992.

3. The mother of my child is Kymberley Susan Fusco (Kym). When she discovered the unplanned pregnancy, we considered marriage, however, we could not marry at that time.

4. A few weeks prior to the birth, Kym unilaterally made arrangements for adoption with a couple from Connecticut ("Smiths"). She made these arrangements without my knowledge or consent. She did not seek my approval nor did she indicate that I had any choice in the matter.

5. I felt that the idea of having our child raised by others was not in his best interests and I insisted that we obtain additional counseling, but at the same time I wanted to be supportive of Kym since she indicated that she was having a difficult time both physically and emotionally with the pregnancy.

6. During this pre-birth period I contacted our local minister and invited him to our home to advise us. Kym continued to lean toward adoption, and since at that time I thought I had no choice and little influence in her decision, I wanted to continue to be supportive of her wishes while hoping that she would have a change of heart. I was trying to be loving, encouraging and tolerant toward Kym during this difficult physical, emotional and spiritual time. I wanted to accommodate her wishes, but I also wanted to make my own decision after sufficient time for reflection and thought.

7. During this pre-birth period I also contacted both a local attorney and an agency specializing in adoptions, and they each informed me that after signing documents in Pennsylvania we would have a minimum of forty days to consider the decision and confirm our final choice before the court.

8. At no time did I ever state to anyone that I wanted my child to be adopted, nor did I ever agree that I

would not stop the adoption process and assert by [sic] fundamental parental rights to my child.

9. On July 7, 1992, the eve of our child's birth, Kym instructed me to compose a letter to Catholic Family Services in Connecticut stating that I was supportive of *her* decision. Kym told me that we each needed to write these letters in order to comply with Connecticut regulations, since the prospective adoptive parents resided in Connecticut. The letter I personally wrote, signed and handed to Kym was not notarized in my presence or with my knowledge. (Respondent's Exhibit 4)

10. I was supportive of Kym and "her decision", as this letter precisely states, but I was reserving judgment about *my own decision* because I wanted a reasonable period of contemplation after the birth before I made a final decision about parenting.

11. The thought of terminating my parental rights was a difficult, complex, and heart-wrenching decision for me and I always thought the law of my state governed the period of time involved in the filing of papers. I did not "enthusiastically endorse the termination/adoption plan".

12. The reference I made in the letter that "she had found the 'right couple'" was used as merely a polite and complimentary phrase toward Kym. I had not yet met the prospective adoptive parents and was not at all acquainted with them. I specifically wrote that "*she* has found", not "*we* have found" nor "*I* have found".

13. I was enthusiastic about the birth of my son on Wednesday morning. Other than hospital staff I was the first person to hold my son and I was the first one to feed him. From then on I loved him, held him, fed him, and

sang to him at every opportunity. I took an entire week off from work to be with him and his mother every day all day long until the day they were released from the hospital. I love my son and I have always loved him, and I want, and have always wanted to parent him.

14. The very first contact I had with The Adoption Alliance was with Marilyn Montgomery on July 11, 1992 at the Sewickley Valley Hospital in Pennsylvania where my son had been born just three days before. Kym had made special arrangements for me to come to the hospital for a brief time during my lunch break from weekend military reserve duty that Saturday.

15. Prior to this July 11th meeting, Kym told me that we would be signing a document authorizing The Adoption Alliance to take temporary custody of our child in Pennsylvania. She also explained that we needed to wait at least 72 hours after the birth before signing any documents in order to comply with Pennsylvania law.

16. When I entered Kym's hospital room around noontime on July 11th, Kym and Marilyn were there talking. Marilyn introduced herself as a social worker representing The Adoption Alliance and shortly thereafter produced a black box and told us she would be taping our meeting.

17. After Marilyn turned on the tape recorder the first substantive thing that I said was that I wanted to receive counseling concerning this decision. Marilyn specifically told me that I was entitled to counseling and that it would be arranged shortly thereafter with a local agency or counselor. She then took out her business card,

wrote her home address on the back, and handed it to me explaining that I could contact her with any questions.

18. Marilyn asked Kym and me whether we were on medication or otherwise impaired. She spoke almost entirely with Kym and briefly discussed Kym's other children and asked if she was "comfortable" in choosing adoption. Marilyn also told us that we would need to sign a document stating that we had not received money or other remuneration prior to signing.

19. Shortly thereafter, someone from the hospital staff was summoned to witness the signing of the documents, and I believed that was done for verification to the hospital that we as natural parents were permitting our baby to be released to the social worker who worked for an agency licensed in Pennsylvania.

20. Marilyn did not review any of the documents in detail, nor did she attempt to explain their legal significance while I was present. Her role was that of a clerical dispatcher, handing out and regathering the papers to obtain signatures.

21. I took time to read the documents that I was planning to sign and did in fact sign after making some changes, but I do not recall reading the documents presented to Kym which I witnessed. I specifically asked Marilyn for copies of anything that I signed, and she told me that she would provide them. I expected that Kym would have these copies when I saw her that evening, but in fact it was more than two months later after numerous requests when I finally received only a copy of the Affidavit of Waiver of Interest in Child.

22. On July 11, 1992 when I signed papers I did not know that Marilyn was a notary public. I was not asked to raise my right hand to be sworn and there were no other formalities of signing. I did not see a notary stamp or seal and no documents that day were notarized in my presence. I was not provided with a copy of the affidavit prior to signing it.

23. This meeting took less than 15 minutes total time. I had no more contact with Marilyn that day and have not had any contact since then.

24. It did not surprise me that the documents were signed quickly, with very little explanation, because I had been told we were signing documents for the specific purpose of giving The Adoption Alliance authorization to obtain temporary custody of our child in Pennsylvania.

25. I asked for copies of all of the documents that I had signed because I thought I would have an opportunity to review and revise or revoke them before they were presented to the Pennsylvania court after 40 days had expired.

26. Marilyn did not do any counseling with me. Neither Marilyn nor anyone else ever explained to me that the Affidavit of Waiver of Interest in Child which I signed in Pennsylvania would be taken to and filed in Texas and that my parental rights would be terminated in Texas.

27. Marilyn did not tell me that the document I signed was irrevocable, nor did she inform me about the legal maneuvering that The Adoption Alliance and the Smith's were anticipating. I most certainly was not informed by *anyone* that my parental rights would be terminated in a Texas court only one week after my child was born without notice to me.

28. Since Kym and I lived in Pennsylvania and our child was born in Pennsylvania and the documents were signed in Pennsylvania, I understood that our parental rights were governed by Pennsylvania law and that any termination, should we continue to desire it, would proceed later according to the laws of Pennsylvania.

29. I signed the Affidavit of Waiver of Interest on July 11, 1992 with the understanding that I had a minimum of 40 days to consider the adoption alternative and to make sure that giving up my parental rights was what was best for my child and for all others concerned. I thought I would be notified of any court actions and that I would have the right to appear to let my final wishes be known as Pennsylvania law demands.

30. Even the fact that the documents were left blank with the state and county led me to believe that they would be filled in with "Pennsylvania" and "Allegheny" where we reside.

31. When I signed the Affidavit on July 11, 1992, I had been told that The Adoption Alliance was licensed in Pennsylvania.

32. It was never my intent to waive the reasonable decision-making period given to parents in Pennsylvania nor did I ever expect to be subjected to the Texas legal system and incur the burden, inconvenience and expense of litigation more than 1,500 miles from my home. I had absolutely no idea or expectation when I signed the Affidavit of Waiver of Interest that the termination could be almost instantaneous.

33. I was never served with citation and I was never notified of any proceedings filed in Texas. A lawyer was not appointed to represent me or my child.

34. I notified The Adoption Alliance as early as July 24, 1992, sixteen days after my son was born, and 13 days after I signed the affidavit of Waiver of Interest, that I wanted to parent my son. I clearly communicated to The Adoption Alliance at that time that I wanted my child returned to me.

35. For nearly three years I have fought to get my child. I have been denied the joy of being a father to my first born son because I briefly considered the possibility of adoption and because I thought I was protected by my own states' law.

Further affiant sayeth naught.

/s/ Paul David Woosley
PAUL DAVID WOOSLEY

SUBSCRIBED AND SWORN to before me on the 22nd day of June, 1995, by Paul David Woosley, to certify which witness my hand and official seal.

/s/ Alice M. Popowich
Notary Public, State
of Pennsylvania

Notarial Seal
Alice M. Popowich, Notary Public
Sewickley Boro, Allegheny County
My Commission Expires
July 22, 1998
Chamber, Pennsylvania
Association of Notaries

APPENDIX H

NO. 95-PA-01117

PAUL DAVID WOOSLEY	§	IN THE DISTRICT COURT
	§	225th JUDICIAL DISTRICT
vs.	§	BEXAR COUNTY, TEXAS
THE ADOPTION ALLIANCE, ET AL	§	

PETITIONER'S MOTION TO VACATE VOID DECREES

(Filed March 1, 2000)

Paul David Woosley ("Woosley"), Petitioner pro se, files this Motion and in support avers the following:

PROCEDURAL BACKGROUND

1.1 This is an action to vacate void decrees in Cause No. 92-PA-02069 ("Decree of Termination") and Cause No. 93-PA-00045 ("Decree of Adoption") styled "In the Matter of Baby Paul David Uebing Woosley, a Child".

1.2 This cause was severed from 93-PA-01149, wherein Respondents were granted a Motion for Partial Summary Judgment, a Motion upheld in *Woosley v. Smith*, 925 S.W. 2d 84 (Tex.App.– San Antonio 1996).

FACTUAL BACKGROUND

2.1 On July 8, 1992 a child was born to Woosley and his long-term girlfriend, who was legally separated from her husband pending a subsequent divorce.

2.2 The child was born in Pennsylvania where both parents resided.

2.3 In Pennsylvania, at the mother's request, Woosley provisionally signed an Affidavit of Waiver of Interest in Child ("Affidavit") according *temporary* custody to Respondent Adoption Alliance.

2.4 This Affidavit states in relevant part:

> "I have further been informed that if I execute this instrument and do not take the necessary steps to claim the rights of a parent, a Court of Competent jurisdiction may enter a judgment that will forever prevent me from asserting any rights I wish to claim in and to the child."

The Affidavit does not state that it is irrevocable, nor does it indicate that it will be used in Texas or in any venue outside the parents' residence.

2.5 Under the laws of the Commonwealth of Pennsylvania, Woosley and similarly-situated Pennsylvania parents are accorded a minimum of 50 days ("waiting period") after signing such documents to make their final decision before a hearing can be scheduled to terminate parental rights. (*23 Pa. Cons. Stat. Ann.* §2504).

2.6 Woosley contacted Respondent Adoption Alliance within the mandated waiting period and asked to parent his first-born son the subject of the void decrees.

2.7 Woosley eventually learned that his parental rights had purportedly been terminated only one week after his child was born in a San Antonio courtroom more than 1500 miles from his residence. That very day he sent $1500 by Federal Express to retain a Texas law firm to

quash the termination. Woosley also telephoned the ICPC offices in Texas, Pennsylvania, and Connecticut and affirmatively informed them that he wanted his son returned to his custody. All of these actions occurred within the waiting period.

2.8 If Woosley's child ever entered Texas, which is not relevant to this Motion but which has not been established due to contradictory testimony, then he was present in Texas for only a few days before being expeditiously whisked away to Connecticut by would-be adoptive parents, Respondents Smiths, who wished to adopt a second child and who at all relevant times have been residents of Connecticut.

2.9 The void Decree of Termination was entered on July 15, 1992.

2.10 The void Decree of Adoption was entered on March 1, 1993.

2.11 Woosley was never notified of the pendency of any of the proceedings.

PETITIONER'S GROUNDS FOR RELIEF

3.1 Upon information and belief, the material facts insofar as this Motion are not in dispute. Various affidavits have been filed by various parties in the original action mentioned at 1.2.

3.2 Woosley has always maintained that the Texas decrees terminating the parental rights of the Pennsylvania parents and granting an adoption to Connecticut residents are void due to total lack of jurisdiction, violation of due process since no notice was provided, and extrinsic

fraud since the timing and location of the proceedings were concealed. The parents were not even named as defendants in these actions – they were not provided with a meaningful or realistic opportunity to contest these decrees before they were issued.

ANALYSIS IN SUPPORT OF MOTION TO VACATE VOID DECREES

4.1 Well-established judicial principles dictate that a Texas court has no business inserting itself into intimate familial relationships involving a Pennsylvania-born child of Pennsylvania parents regarding Connecticut residents. Empirically, no *other* instance has been discovered where *any* state court has prevailed in granting an adoption of a non-resident child to non-resident parents.

4.2 Perhaps the closest case on point is *Goclanney v. Desrochers*, 660 P.2d 491 (Ariz.App. 1982). Unlike the instant case, in *Goclanney* at least the natural parents and adoptive parents lived in Texas for a period of time and documents were signed in Texas. On March 1, 1977, the Texas court terminated parental rights and entered a decree of adoption. Nevertheless, more than one year after the decree was entered, it was successfully attacked as void despite a statute providing that "after one year from the date the adoption decree is entered, any irregularity in the proceeding shall be deemed cured and the validity of the decree shall not thereafter be subject to attack on any such ground in any collateral or direct proceeding." *Id.* at 493. The Court of Appeals affirmed that the "lack of jurisdiction here was not an 'irregularity'" and held that, *under Texas Law*, the Texas court lacked jurisdiction to

enter an adoption decree when the child was not a legal resident or domiciliary of Texas. *Id.* at 493.

4.3 The overarching principle underlying this action, however, is that Texas law does not apply. State courts cannot at their whim, unconstitutionally usurp jurisdiction and compel out-of-staters to comply with their standards, *a fortiori*, when the non-resident is denied due process by not being presented a meaningful opportunity to be heard.

4.4 This court is bound, in the context of this Motion, by precedents of the United States Supreme Court, which has consistently stated that judgments entered without jurisdiction are void. *Burnham v. Superior Court of Cal.*, 495 U.S. 604 (1990); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). Recalling "a long and venerable line" of cases, the Court recently reiterated in *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. ___, slip op. at 1 (1999) that "[j]urisdiction is power to declare the law;" and "'[w]ithout jurisdiction the court cannot proceed at all in any cause.'" (quoting *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 94 (1998) (quoting *Ex parte McCardle*, 7 Wall, 506, 514 (1869))).

4.5 Texas has never been the home state of Woosley's son as contemplated by 28 U.S.C. § 1738A, nor was the child domiciled in Texas by the standards established in *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 (1989). There, the natural parents deliberately chose to give birth outside of their reservation in Mississippi in 1985 and signed consent-to-adoption forms. The 1986 Final Decree of Adoption was vacated as void, affirming that jurisdiction of the subject-matter must arise by law and not by mere consent, and confirming that statutes

governing the termination of parental rights are "procedural safeguards". *Id.* at 36. The Court also noted that "a state-law definition of domicile would likely spur the development of an adoption brokerage business." *Id.* at 46, n. 20. Accordingly, mere recitations by this court within the uncontested decrees "that it has jurisdiction of this cause and of all parties and that no other Court has continuing jurisdiction" does not of itself confer jurisdiction nor render the void decrees unassailable.

4.6 Analogously, neither Woosley nor any of the other parties had the ability to choose which states' laws would govern the termination of parental rights given the circumstances of this case. The supreme law of the land dictates that the Commonwealth of Pennsylvania was the exclusive forum according to the Parental Kidnapping Prevention Act of 1980 (28 U.S.C. §1738A) and the Uniform Child Custody Jurisdiction and Enforcement Act. This court is aware of these laws and Supreme Court precedents, as evidenced in *Sims v. Adoption Alliance*, 922 S.W.2d 213 (Tex. App.– San Antonio 1996), and is enlightened enough to realize that the courts of Bexar County cannot establish themselves as a nationwide adoption clearinghouse.

4.7 Furthermore, none of the parents nor the child established minimum contacts with Texas, and since Woosley was never notified that a Texas proceeding to terminate his parental rights was contemplated, he did not purposely avail himself of the laws of Texas, nor did he have a "full and fair opportunity to litigate" the issue. *Baker by Thomas v. General Motors Corp.*, 522 U.S. 222, 250 (1998). The Texas decrees "cannot command obedience elsewhere on a matter the [Texas] court lacks authority to

resolve. *Id.* at 241, referencing *Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 282-283 (1980) (plurality opinion).

4.8 Although the pre-prepared Affidavit that Woosley signed contained a waiver of notice, this is not a waiver of personal jurisdiction, nor does it pass the crucial test of *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 314 (1950):

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of action and afford them an opportunity to present their objections.

4.9 Under these circumstances, it would be incongruous to ask new parents to waive notice without benefit, but any such waiver must be considered meaningless if they ultimately decide to parent during the mandated waiting period. Besides, the parent must receive affirmative notice so that they can have an opportunity to assert that they signed under unacceptable conditions or assert that the signature was forged. Moreover, it would be uncivilized to exploit new parents, at an emotionally-vulnerable time, to waive the very rights conferred to protect them at that very emotionally-vulnerable time.

4.10 *See* Restatement (Second) of Judgments §2, *i. Waiver of Notice*, p. 44 (1980):

> It is also possible for a person by contract to waive notice in advance of litigation. Yet because notice is regarded as so important, many jurisdictions refuse to give effect to such contractual provisions. Where their validity is recognized, under the Due Process Clause they may be given

> effect only if the waiver was voluntary and with full appreciation of its significance and consequences. . . . It may be, therefore, that a waiver Agreement will assuredly be given effect only when made by a person experienced in affairs of business who made such an agreement through negotiations that focused on the matter.

4.11 As the language of the Affidavit described at 2.4 indicates, a signature on such a vague Affidavit cannot be construed as an instantaneous termination of parental rights, nor was Woosley doing business with Texas when he signed the Affidavit in Pennsylvania. It is respectfully submitted that the Texas trial court's assertion of dominion over Woosley in this fashion is plainly unconstitutional and was rejected on due process grounds in *Rush v. Savchuk*, 444 U.S. 320 (1980). An annotation related to Rush describing the "minimum contacts" standard for state court's assertion of jurisdiction over nonresidents can be found at 62 L Ed 2d 853. The fact that The Adoption Alliance happens to be a Texas agency does not satisfy the "minimum contacts" requirement of the Fourteenth Amendment's Due Process clause.

4.12 It is self-evident that the termination of parental rights is not accomplished by contract; otherwise, there would be no need for a formal termination hearing unless a dispute arose. There has also been a longstanding tradition to discourage baby brokering. Contractual arrangements in this domain are thereby unacceptable because they would lead to unscrupulous practices and misunderstandings; accordingly, procedural safeguards are established by statute for the protection of all involved.

4.13 This court's unusual usurpation of power without notice is so offensive to "traditional notions of fair

play and substantial justice" that it renders the decrees void *ab initio*. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

4.14 *In Re Lake*, 202 B.R. 751 (9th Cir.BAP 1996) advises that a void state judgment "is subject to collateral attack in a court of the state that rendered the judgment or in a federal court." (citing *Heiser v. Woodruff*, 327 U.S. 726, 736 (1946); *Kalb v. Feuerstein*, 308 U.S. 433 (1940)).

4.15 "A void judgment is subject to both direct and collateral attack, while a judgment that is merely voidable must be corrected through ordinary appellate or other direct procedures." *Matter of Gober*, 100 F.3d 1195 (5th Cir. 1996).

4.16 Although previous litigation based upon these same facts has occurred as described at 1.2, claim preclusion (*res judicata*) and issue preclusion (collateral estoppel) doctrines do not apply to judgments which are void *ab initio*; elsewise, such judgments would not be void but merely voidable. Previous unsuccessful attacks cannot breathe life into a void judgment.

4.17 These long-standing principles are succinctly summarized in *Moore's Federal Practice*, ¶60.25, at 60-224 (2d ed. 1983), which states that a void "judgment may also be collaterally attacked at any time in any proceeding, state or federal . . . these principles are equally applicable to a void state judgment." [Citations omitted.]

4.18 More recently, 50 C.J.S. JUDGMENT § 546 (1997), pp. 101-102 explains:

> A judgment is void when granted in contravention of a mandatory statutory provision, or rendered by a court which lacked personal or

subject matter jurisdiction, or acted in a manner inconsistent with due process . . . .

> A void judgment, unlike one which is merely erroneous or voidable, is not entitled to any respect or deference by the courts, but may be attacked at any time by anyone, including the party in whose favor it is given, and may be impeached in any action, direct or collateral. [Multiple citations omitted.]

4.19 Although it is emphasized that the specific laws of Texas are not controlling for this Motion, Texas courts have recognized the paramount principle that void judgments are void. *Fulton v. Finch*, 346 S.W.2d 823, 827 (1961) indicates that a void judgment in a termination suit is subject to attack at any time in any court. *See First State Bank & Trust Co. v. Overshiner*, 198 S.W. 979 (Tex. Civ.App. – El Paso 1917) ("the trial court has the authority to set aside a judgment which is a nullity, *notwithstanding it has been affirmed upon appeal*"). [Emphasis added.] *See also Evans v. Young County Lumber Co.*, 368 S.W.2d 783, 786 (Tex.Civ.App. – Fort Worth 1963) (a void judgment "may be collaterally attacked in any court at any time, including a time after appeal is perfected"). "Although it is occasionally harsh in result, Texas courts have created and upheld the absolute verity rule as a policy to protect their judgments from indefinite suspension and unwarranted attack." *A.L.T. Corp. v. Small Business Administration*, 801 F.2d 1451, 1457 (5th Cir. 1986). An important exception to this absolute verity rule, necessary to comply with constitutional standards, is when the judgment is void or where the original court is "absolutely unauthorized to give the relief asked." *Id.* at 1457 n. 8.

4.20 These notions about void judgments are consistent with the traditional concept that post-deprivation remedies do not satisfy due process. *Parratt v. Taylor*, 451 U.S. 527, 545 (1981); *Stanley v. Illinois*, 405 U.S. 645, 647 (1972). In other words, a tenet of American jurisprudence is that a court cannot violate due process and thereby commit a wrong just because it could be undone if the aggrieved litigant were savvy enough or lucky enough to navigate the vagaries of that court system. *Id.* at 647.

4.21 "The cases say that a void judgment acquires no validity as the result of laches on the part of the adverse party." *Misco Leasing Inc. v. Vaughn*, 450 F.2d 257, 260 (10th Cir. 1971) (citing *Austin v. Smith*, 312 F.2d 337, 343 (D.C. Cir. 1962)).

4.22 Accordingly, a denial of this Motion, absent substantiating reasons asserting that the decrees are not void, will not make these decrees any less void or unassailable. So far, no court has attempted to explain why these decrees are not void based upon the merits raised herein, notwithstanding bald claims of "strict compliance."

4.23 Granting this Motion, on the other hand, must not be construed as an attempt to modify the custody of this child who is now nearly eight years old. No Texas court possesses the authority, knowledge, or jurisdiction to make such a determination.

4.24 Any subsequent litigation after this Motion is granted, should any occur, must be made by a court of competent jurisdiction which may consider a complex of factors such as best interests, laches, diligence, and equitable adoption.

Appendix H

CONCLUSION

Wherefore, premises considered, Woosley prays for vacation of the void decrees and respectfully suggests that this court apologize for its encouragement of intolerable forum shopping and for its lack of judicial discipline by not enforcing constitutional standards.

Dated: February 29, 2000

BY: /s/ Paul David Woosley

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